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No. 09-154

In The Supreme Court of the United States

FLORIDA ASSOCIATION OF PROFESSIONAL LOBBYISTS, INC., a Florida Not for Profit Corporation; GUY M. SPEARMAN, III, a Natural Person; SPEARMAN MANAGEMENT COMPANY, a Florida Corporation; RONALD L. BOOK, a Natural Person; RONALD L. BOOK, P.A., a Florida Professional Association,

Petitioners,

vs.

DIVISION OF LEGISLATIVE INFORMATION SERVICES OF THE FLORIDA OFFICE OF LEGISLATIVE SERVICES, a Florida State Agency; THE FLORIDA COMMISSION ON ETHICS, an Independent Constitutional Commission; JEFF ATWATER, as President of the Florida Senate; and LARRY CRETUL, as Speaker of the Florida House of Representatives,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF AMICUS CURIAE OF THE FLORIDA RESTAURANT & LODGING ASSOCIATION, INC., IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

As one of the state's oldest non-profit trade organizations, established in 1946, The Florida Restaurant & Lodging Association, Inc. ("FRLA"), is privileged to represent the interests of over 10,000 restaurant and lodging establishments located throughout the state of Florida, as well as many of their suppliers and service providers. Collectively, the hospitality industry is the state's largest employer, generating $57 billion annually and comprising 20% of Florida's economy. Each year, the hospitality industry pays over $3.4 billion in sales tax revenue to the state of Florida.

In addition to advocating on behalf of Florida's hospitality industry before the legislative and executive branches of state government, one of FRLA's primary missions is to provide education and training to the over 900,000 hard-working men and women employed in the many hospitality businesses serving Florida's residents and visitors. FRLA provides food handler and food manager education for the state's restaurant employees and partners with a national

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[1] All counsel of record received notice of *amicus*' intention to file this brief at least ten days before this brief was due, and all counsel of record have indicated their respective clients' consent and/or lack of objection to the filing of the brief. *Amicus* states that no portion of this brief was authored by counsel for a party and that no person or entity other than *amicus* or their counsel made a monetary contribution to the preparation or submission of this brief.

trade association to provide lodging management training to personnel in Florida's lodging establishments. FRLA also funds and manages an educational foundation in which over 20,000 high school students participate in training programs designed to introduce them to the hospitality industry.

With respect to the case that is the subject of the pending petition for writ of certiorari before this Court, FRLA's members have been, and continue to be, directly and negatively impacted by the Florida gift ban law under challenge in this case. In particular, the law has resulted in a significant decrease in income for hospitality establishments in Florida's capitol city, Tallahassee. A 2007 study titled "Estimated Economic Impact of the Florida Gift Ban Law upon Tallahassee/Leon County, Florida," by Florida State University economists Dr. Mark A. Bonn and Dr. Julie Harrington (attached as an appendix), found that the Florida gift ban law cost Tallahassee and the surrounding area more than $4.1 million in hospitality and related spending during just the brief 60-day length of Florida's regular legislative session.

ARGUMENT

The position of the FRLA is that the complete and total gift ban in Florida imposed by the Florida gift ban law "does not aim specifically at evils within the allowable area of State control, but on the contrary, sweeps within its ambit other activities that

in ordinary circumstances constitute an exercise of freedom of speech." *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940). The record compiled by the Florida Legislature during its deliberations on the Law contain no evidence whatsoever to support the contention that an absolute gift ban is necessary to maintain the integrity of the state's basic governmental processes. The decision to ban all expenditures by lobbyists was political in nature and was not closely drawn to match the goal of preventing public corruption.

While now prohibited by law from buying a public official a cup of coffee, from providing them with an educational book or video, or from giving them anything with a discernible economic value, lobbyists can still contribute up to $500 to a candidate's campaign per election cycle, contribute up to $500 per election cycle to a political committee supporting the candidate, contribute an unlimited amount of money to a political party, and contribute an unlimited amount of money to a "committee of continuous existence" or other "527" political entity affiliated with the candidate. Fla. Stat. §§ 106.08(1)(a), 106.04.

Furthermore, while the gift ban prohibits a lobbyist from buying dinner for a legislator, the lobbyist can contribute to a political party, a political committee, or a committee of continuous existence, which can itself then pay for the legislator's dinner. Against this backdrop, no evidence exists that a

blanket gift ban achieves the state's objective of preventing corruption or the appearance of same.

Another indication that the law is overbroad is the fact that the law applies to direct and *indirect* gifts. Lobbyists are therefore banned from contributing to grassroots lobbying organizations or nonprofit organizations associated with or favored by public officials. The gift law could therefore have a disparate impact on the ability of these organizations to mobilize and participate in the political process.

If the Florida law at issue in this case had simply set some maximum value on the cost of a gift or meal a lobbyist or its client could lawfully give to a public official, e.g., $100, this Court would be much harder pressed to "determine with any degree of exactitude the precise restriction necessary to carry out" the Florida Legislature's anticorruption objective, i.e., whether $50, $100, or $150 is the "right" amount. *Randall v. Sorrell*, 548 U.S. 230, 248 (2006). Here, however, the Florida Legislature did not produce any evidence that a total gift ban is necessary to achieve this objective.

One's ability to spend money in the context of speaking to public officials is a fundamental right that should not be restricted unnecessarily. In its landmark case, *Buckley v. Valeo*, 424 U.S. 1 (1976), the central holding is that "spending money on one's own speech must be permitted." *Colorado Republican Federal Campaign Committee v. Federal Election Comm'n*, 518 U.S. 604, 627 (1996). While *Buckley*

specifically dealt with campaign contributions, expenditures made by lobbyists or their clients in furtherance of communicating with government officials on matters of great public importance should be protected for similar reasons.

This Court has long recognized the fundamental right to engage in political speech. Political speech comes in many forms. It is well established that political speech exists in the form of campaign contributions and campaign expenditures, and similar constitutional protections should exist for expenditures made by lobbyists or their principals in their pursuit of political dialogue with public officials. Ordinary citizens and businesses alike use lobbyists to represent their interests at the state capitol. Personal appearances by these citizens or businesses in Tallahassee during the state's legislative session are frequently impractical in light of the time it would take away from the demands of their already full daily schedules. By hiring lobbyists, these citizens and businesses can seek to provide input into government decision-making without disrupting their personal and professional lives. That political speech, whether through an intermediary such as a lobbyist or not, is protected by the First Amendment.

This Court has upheld limits for political contributions, while recognizing that sometimes limits may cause "more harm to protected First Amendment interests than their anticorruption objectives could justify." *Randall*, 548 U.S. at 247-248. When it comes

to limiting campaign contributions, it is well established that some lower limit exists and they cannot be completely prohibited. *Id.*

Similarly, a complete gift ban is overbroad and facially invalid. The blanket prohibition of the gift ban has had a chilling effect on the ability of lobbyists and their principals to communicate with public officials on matters of great public importance. Legislators and public officials routinely maintain extraordinarily full schedules. Sometimes, the only opportunity for a legislator or public official to meet with a lobbyist may be during a meal either before or after the traditional work day. However, with a complete gift ban in place, many public officials hesitate to even enter a restaurant with a lobbyist for fear of spurring an ethics complaint based upon the appearance that they might be violating the gift ban. This chilling effect can eliminate the opportunity for the lobbyist's client to have its views relayed to the public official and impinges on the ability of that public official to gather relevant information on issues of public concern.

CONCLUSION

For all the reasons explained above, the FRLA urges this Court to grant the petition for a writ of certiorari.

Dated: September 8, 2009

Respectfully submitted,

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Estimated Economic Impact of the Florida Gift Ban Law upon Tallahassee/Leon County, Florida

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October 19, 2007

Introduction & Methodology

The Florida Gift Ban Law is an act "relating to registration and reporting requirements for legislative lobbyists and lobbyist of the executive branch and Constitution Revision Commission," which was approved in December 2005 and went into effect January 1, 2006. The Florida Gift Ban Law consists of requirements as such:

- ☐ Principal[1] upon the registration of the principal lobbyist to identify the principal's main business.
- ☐ Lobbying firm and principal must maintain certain records and documents for a specified period.
- ☐ Lobbying firm has to file quarterly compensation[2] reports.
- ☐ Lobbying firm has to report certain compensation information in dollar categories and specific dollar amounts.
- ☐ Prohibiting lobbying expenditures, except for certain floral arrangement and celebratory items.
- ☐ Prohibiting principals from providing lobbying compensation to any individual or business entity other than a lobbying firm.

The purpose of this study was to determine the extent that the Florida Gift Ban Law has impacted Tallahassee/Leon County businesses during legislative session occurring in March and April, 2007. In an effort to achieve the study objectives, a data collection

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[1] Principal: refers to the person, firm, corporation, or other entity that has employed or retained a lobbyist.

[2] Compensation: refers to a payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a lobbying firm, directly or indirectly, by a principal for any lobbying activity.

instrument was developed specific to the study in order to estimate the total economic impact of the Florida Gift Ban Law. In order to capture responses from businesses directly affected by the Gift Ban Law personal interviews were randomly conducted with Tallahassee/Leon County business owners and operators representing very specific economic categories of Leon County as categorized by the IMPLAN Professional® software program, a widely accepted economic model used throughout the U.S. by many counties conducting economic value research. The economic categories as reported in IMPLAN used for this study represented fourteen sectors and a total of 139 businesses. From this list, thirty-three percent (n=46) of these businesses were contacted at random. A total of 36 businesses agreed to provide data based upon confidentiality of the information. This resulted in a usable response rate of twenty-six percent. The following business categories were represented in the study:

1. Transit and Ground Transportation (Taxi Services)
2. Transit and Ground Transportation (Limousine Services)
3. Transit and Ground Transportation (Rental Auto Services)
4. Scenic and Sightseeing Tours
5. Couriers and Messengers (Couriers/ Delivery)
6. Couriers and Messengers (Florist)

7. Miscellaneous Stores Retail (Bars & Pubs)
8. Miscellaneous Stores Retail (Lounges)
9. Specialized Design Services (Event Planning)
10. Specialized Design Services (Meeting Planning Services)
11. Specialized Design Services (Party Planning Services)
12. Specialized Design Services (Party Supplies)
13. Hotels and Motels
14. Food Services (Restaurants)

Since the enactment of the Florida Gift Ban Law, numerous and continuous claims of lost business revenue by local Leon County business owners have been expressed publicly. The main cause of this situation is attributed to the inability of lobbyists to expend their business dollars on services related to lobbying legislators using establishments and businesses owned and managed by local service providers. Although activity related to this situation occurs throughout the year, most of these dollars are typically spent during legislative session. Spending creates what is known as the multiplier effect, whereby in this application, lobbyist dollars transgress throughout the entire local economy. This becomes possible, for instance, as initial lobbying dollars are spent in Leon County places of business

for legislative lobbying purposes in such establishments as local restaurants, nightclubs, catering services, hotels, etc. Lobbying dollars that are received by local employees working in our area businesses are subsequently spent by our paid workforce at many other places of businesses throughout the county (i.e. grocery stores, gas stations. shopping malls, etc., etc.) This behavior starts a chain reaction of dollars that are virtually turning over, or multiplying, within our community. In the case of Leon County, each lobbyist dollar spent creates a multiplier of 1.45, as calculated by the IMPLAN software program. This indicates that for every $1.00 entering our economy contributed by lobbyists for paid activities related to lobbyist spending, it produces a total positive income change of $1.55. This study analyzed lobbyist spending as a direct result of the Florida Gift Ban Law and determined that **Tallahassee/Leon County lost more than $4.1 million, or slightly more than $500,000 each week of session due to lack of total lobbyist spending during March and April of 2007.**

Related Evidence

Many business owners and operators expressed their concern with lost business opportunities due to the Gift Ban Law above and beyond those absolute dollars they were able to document. In essence, the inability to introduce local business products and services to potentially new customers through lobbyist spending for events and other activities is

immeasurable, but indeed exists. Historically, when lobbyists prior to the Gift Ban Law provided services, many first time users of local products and services experiencing satisfaction from service providers, returned as repeat customers. There was an indirect marketing effect created through positive word of mouth by new customers creating additional business for many of the responding companies. Although this cannot be validated without further research, we believe it to be credible information. It should be noted that the economic analysis for this project took a more "conservative" approach and did not examine or include this intangibility factor. Satisfied customers lead to lifetime relationships that create profits and revenues for businesses. Without the ability to provide access to local businesses through lobbyist spending, economic loss is certain to some unknown degree at this time.

IMPLAN Economic Impact Analysis

The IMPLAN program is widely accepted by researchers because it uses multipliers for specific outputs to estimate impact visitor spending has upon labor, income and employment. The economic impact for the Florida Gift Ban on the Tallahassee/Leon County region calculated by using IMPLAN is summarized in Table 1 below. The total impact on output decline (Direct + Indirect + Induced) of all lobbying expenditures during March and April 2007 is more than $4.1 million. According to IMPLAN, the $4.1 million output decline would have supported

74 existing employees at an average annual compensation loss of $17,973 ($1.33/74) assuming this trend continues year-round.

Table 1

Florida Gift Ban Economic Impact Analysis for Legislative Session, 2007

Gift Ban IMPLAN Analysis[3]		**Direct**	**Indirect**	**Induced**	**Total**	**Multiplier**
All Business Sectors	Output ($mil)	$3.02	$0.57	$0.55	**$4.14**	1.45
	Labor Income ($mil)	$0.97	$0.18	$0.18	**$1.33**	1.55
	Employment	63	5	6	**74**	1.59

[3] Florida Gift Ban Economic Analysis conducted with 2004 Leon County IMPLAN data.

Appendix 1

Glossary of Economic Impact Terms

- *Direct effect:* production changes associated with changes in demand for the good itself; it is an initial impact on the economy.
- *Employee compensation:* wage and salary payments as well as benefits, including health and life insurance, retirement payments and other non-cash compensation.
- *Employment multiplier:* for every million dollar change in final-demand spending (direct output), the change in employment (jobs).
- *Indirect effect:* the secondary impact caused by changing input needs of directly affected industries (e.g., additional input purchases to produce additional output).
- *Induced effect:* caused by changes in household spending due to the additional employment generated by direct and indirect effects.
- *Labor income:* consists of employee compensation and proprietary income.
- *Labor income multiplier:* for every dollar change in final-demand spending (direct output), the change in income received by households.
- *Output:* industry output is a measure of the value of goods and services produced in the study area.
- *Output multiplier*: An output multiplier for a sector is defined as the total production in all sectors of the economy that is necessary to satisfy a dollar's worth of final demand for that sector's

output (Miller and Blair, 1985). In other words, every dollar change in final-demand spending (direct output) changes the total value of output in all sectors.

- *Proprietary income:* consists of payments received by self-employed individuals as income. This includes income received by private business owners, doctors, lawyers and so forth.